

Turner



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: International Ordnance, Inc.

File: B-240224

Date: July 17, 1990

Noel K. Evans, Esq., Davidson & Evans, for the protester. Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. General Accounting Office does not review size status determinations made by the Small Business Administration (SBA) since SBA has conclusive authority to determine small business size status for federal procurements.
2. A contracting officer is not required to delay contract award during the appeal period provided for challenges to initial Small Business Administration size status determinations.

DECISION

International Ordnance, Inc. (IOI) protests the awards of contracts to Quantic Company and Martin Electric Company under request for proposals (RFP) No. DAAA09-R-90-0305 issued by the United States Army for MK125 Igniters. IOI principally questions the contracting officer's determination to award the contracts prior to final resolution of IOI's size status appeal filed with the Small Business Administration (SBA).^{1/}

We dismiss the protest.

^{1/} IOI also claims that the contracting officer was wrong in finding it nonresponsible. The nonresponsibility determination was referred to the SBA for possible issuance of a certificate of competency (COC). The SBA determined that since IOI was not a small business for purposes of this procurement, IOI was ineligible for a COC; it is clear that IOI is seeking review of this matter from the SBA.

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The RFP was issued on March 15, 1990, as an unrestricted solicitation and provided for the award of multiple contracts. IOI submitted a timely offer and was the apparent low offeror. A pre-award survey of IOI was conducted. The survey results indicated deficiencies in IOI's production capability and plant safety, including a finding that IOI did not possess necessary licenses. IOI was notified of the survey results on April 24. The contracting officer subsequently determined IOI nonresponsible and referred the matter to the SBA regional office for possible issuance of a COC.

On May 22, the contracting officer initiated a protest with the SBA challenging the small business status of IOI. The SBA determined that IOI was not a small business and informed the protester of its determination on June 11. The contracting officer awarded the contracts 4 days later. On June 21, IOI appealed the SBA size status determination to the SBA's Office of Hearings and Appeals (OHA). IOI filed its protest with our Office on June 27. The protester alleges that the SBA failed to provide IOI with a copy of the size status protest and contends that the SBA should have dismissed the protest because the allegations were unsupported.

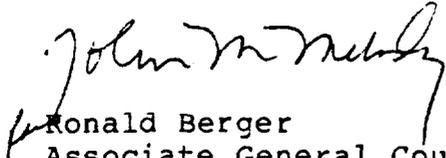
IOI in effect is asking us to review the SBA size status determination. However, whether IOI is a small business concern for purposes of a procurement is for review solely by the SBA. 15 U.S.C. § 637(b)(6) (1988); 13 C.F.R. § 121.3-6 (1990). Our Office neither makes nor reviews size status determinations since the SBA is empowered to conclusively make such determinations. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(2) (1990); D.K. Shiflett & Assocs., Ltd., B-234351, May 2, 1989, 89-1 CPD ¶ 419; Newgard Indus., Inc.--Recon., B-226272.2, Apr. 17, 1987, 87-1 CPD ¶ 422. As IOI itself recognizes, review of initial size determinations is obtained by appealing to OHA, not this Office.

The protester further argues that the award of the contracts prior to final resolution of its size status appeal was arbitrary and capricious and demonstrates the contracting officer's desire not to make award to IOI. IOI argues that it is being denied due process because the award of the contracts effectively renders moot the appeal to the SBA.

Under Federal Acquisition Regulation (FAR) § 19.302(h)(1) (FAC 84-56), when a size status protest has been filed, a contracting officer may not make an award until the SBA regional office has issued a determination or until 10 working days after the SBA's receipt of the protest,

whichever occurs first. Although the regulations provide for an appeal from the SBA regional office's determination by any concern that has been adversely affected, there is no requirement that the contracting officer withhold award during the appeal period. FAR § 19.302(i); HLJ Management Group, Inc., B-225843.6, Mar. 24, 1989, 89-1 CPD ¶ 299; H. Angelo & Co., Inc., B-218573, May 9, 1985, 85-1 CPD ¶ 519. Therefore, we have no legal basis upon which to conclude that the contracting officer abused his discretion by making the awards here.

The protest is dismissed.


Ronald Berger
Associate General Counsel